

No. 769

Office Supreme Court

FILED

MAR 27 1924

# In the Supreme Court

OF THE  
UNITED STATES

OCTOBER TERM, 1924

CHEUNG SUM SHEE, CHEUNG WAI MUN, FONG  
GOON HONG, DER HING FONG, WONG BEN  
JUNG, HONG CHOW JUNG, MOK LING PARK,  
NG SHEE and WONG SHEE, On Habeas Corpus,  
Appellants and Petitioners,

vs.

JOHN D. NAGLE, as Commissioner of Immigration for  
the Port of San Francisco,  
Appellee and Respondent.

CERTIFICATION FROM THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT

## BRIEF ON BEHALF OF PETITIONERS

FREDK. D. McKENNEY,  
JACKSON H. RALSTON,  
JOHN L. McNAB,  
GEO. A. McGOWAN,  
Attorneys for Petitioners.

ROGER O'DONNELL,  
GEORGE W. HOTT,  
W. J. PETERS,  
M. WALTON HENDRY,  
WORLEY & GOLDBERG,  
J. P. FALLON,  
O. P. STIDGER,  
W. G. BECKTELL,  
GASTON STRAUS,  
WHITE & WHITE,  
Of Counsel.



## TABLE OF CONTENTS

---

	Page
Statement of Facts.....	1
The Certified Question.....	3
General Preliminary Observations.....	3
Population of Chinese Persons .....	8
The Issue.....	11
Treaties and Statutory Provisions affecting Exclusion of Chinese Involved in this Case.....	12
The Immigration Acts.....	20
Definition of Immigrant.....	22
Non-Quota Immigrants .....	22
Quota Immigrants.....	23
Preferences within Quotas .....	24
Non-Quota Immigrant Visas .....	24
Exclusion from United States.....	24
Maintenance of Exempt Status.....	26
Act to be in Addition to Immigration Laws.....	26
General Definitions .....	27
Congressional Understanding as to Aliens Ineligible to Citi- zenship under Immigration Act of 1924.....	28
Judicial Construction and Interpretation of Chinese Immi- gration Law .....	33
Should Broad or Narrow Construction be Given to Recent Legislation? .....	37
Interpretation of Section 35.....	42
The Effect of Clause (6) Relative to Admission of Aliens to Carry on Trade.....	45
What was the Effect of the Immigration Act of 1924 on the Chinese Immigration Law?.....	50
Statute Upholding Treaty.....	57
Summary .....	64

## TREATIES AND STATUTES

	Page
Act of March, 1843, Chap. 90, 5 Stat. L., 624.....	53
Treaty of 1844, Malloy's Treaties, Vol. I, p. 196.....	3, 12
Treaty of 1858, Malloy's Treaties, Vol. I, p. 211.....	6, 12
Burlingame Treaty of 1868, Malloy's Treaties, Vol. I, p. 234 .....	6, 12
Treaty of 1880, Malloy's Treaties, Vol. I, p. 237.....	6, 13
Act of May 6, 1882, 22 Stat. L., p. 58, amended July 5, 1884, 23 Stat. L., p. 115.....	16, 36, 39
Act of Sept. 13, 1888, 25 Stat. L., p. 476.....	18, 48
Act of May 5, 1892, 27 Stat. L., p. 25.....	18
Act of Nov. 3, 1893, 28 Stat. L., p. 7.....	19, 39
Convention Regulating Chinese Immigration of 1894, Malloy's Treaties, Vol. I, p. 241.....	14, 49
Act of April 29, 1902, 32 Stat. L., Pt. 1, p. 176, amended Apr. 27, 1904, 33 Stat. L., pp. 394-428....	19
Treaty as to Commercial Relations of 1903, Malloy's Treaties, Vol. I, p. 261.....	15
Immigration Act of February 5, 1917, 39 Stat. L., p. 874.....	20, 50
Quota Act of May 19, 1921, 42 Stat. L., p. 7, amended May 11, 1922, 42 Stat. L., p. 540.....	21, 50
Immigration Act of 1924, approved May 26, 1924..... .....	21, 27, 42, 45, 49, 51, 61

## AUTHORITIES CITED

Report of Committee on Immigration and Naturaliza- tion, No. 176, 68th Congress, 1st Session.....	28-30
Report of Committee on Immigration and Naturaliza- tion, No. 350, 68th Congress, 1st Session.....	31-33
Views of President Hayes, Six Messages of Presidents, p. 446.....	54

## TABLE OF CASES

	Page
<i>Aird, Ex parte</i> , 276 Fed., 954.....	41
<i>Anderson vs. Watt</i> , 138 U. S., pp. 694, 706; 11 Sup. Ct., 449; 34 L. Ed., 1078.....	37
<i>Arthur vs. Homer</i> , 96 U. S., p. 140.....	58
<i>Asakura vs. City of Seattle</i> , 265 U. S., 332; 44 Sup. Ct., 515.....	56
<i>Chae Chan Ping vs. United States</i> , 130 U. S., p. 581; 9 Sup. Ct., 255.....	57
<i>Chew Heong vs. United States</i> , 112 U. S., p. 536; 5 Sup. Ct., p. 255; 28 L. Ed., p. 770.....	57, 63
<i>Chung Toy Ho, In re</i> , 42 Fed., p. 398.....	34, 40
<i>Commissioner, etc. vs. Gottlieb</i> , 265 U. S., p. 310; 44 Sup. Ct., p. 528.....	59
<i>Crow Dog, Ex parte</i> , 109 U. S., p. 570; S. C. 3 Sup. Ct., Rep. 396.....	58
<i>Church of the Holy Trinity vs. United States</i> , 143 U. S., p. 457.....	40
<i>Frohwerk vs. United States</i> , 249 U. S., p. 204; 63 L. Ed., p. 561.....	53
<i>Ghin Hem Shee</i> , Dec. 11, 1924.....	4
<i>Goon Dip et al., In re</i> , 1 Fed. (2), pp. 811, 813, 814....	2, 61
<i>Gouthro, Ex parte</i> , 296 Fed., p. 506.....	41
<i>Harford vs. United States</i> , 8 Cranch, p. 109.....	58
<i>Lam Yam Chow, In re The Chinese Merchant</i> , 13 Fed., pp. 605, 608.....	54
<i>Lau Ow Bew vs. United States</i> , 144 U. S., p. 159.....	16, 38, 55
<i>Lee Kan vs. United States</i> , 62 Fed., p. 914.....	16, 40, 55
<i>Loe Yam Chow vs. United States</i> , 13 Fed., p. 605.....	16
<i>Mitchell vs. Dakota Central Tel. Co.</i> , 246 U. S., p. 396..	53
<i>Ng Fung Ho et al. vs. White</i> , 259 U. S., pp. 276, 279; 42 Sup. Ct., pp. 492, 493.....	21
<i>Scharrenberg vs. Dollar Steamship Co.</i> , 229 Fed., p. 970; 245 U. S., p. 122.....	41
<i>State vs. Stoll</i> , 17 Wall., p. 430.....	58

	Page
<i>Tatsukichi Kuwabara vs. United States</i> , 260 Fed., p. 104	41
<i>Tsoi Sim vs. United States</i> , 116 Fed., p. 920.....	37, 38
<i>United States vs. Gay</i> , 95 Fed., p. 226.....	41
<i>United States vs. Gue Lim</i> , 83 Fed., p. 136; 176 U. S., p. 459; 44 L. Ed., p. 544.....	35, 40, 55
<i>United States vs. Mrs. Gue Lim, supra</i> .....	63
<i>United States vs. Kirby</i> , 7 Wall, pp. 482, 486.....	41
<i>United States vs. Royal Dutch West India Mail Co.</i> , 262 Fed., p. 91.....	41
<i>United States vs. Union Bank of Canada</i> , 262 Fed., p. 91	41
<i>United States vs. Woo Jan</i> , 245 U. S., p. 552; 38 Sup. Ct., p. 207; 62 L. Ed., p. 466.....	21
<i>White vs. Chin Fong</i> , 253 U. S., p. 113; 40 Sup. Ct., p. 449.....	21
<i>Wilson vs. Spencer</i> , 1 Rand., 76; 10 Am. Decisions, p. 491.....	53
<i>Wood vs. United States</i> , 16 Pet., p. 362.....	58
<i>Yee Won vs. White</i> , 256 U. S., p. 399.....	36
<i>Yerger, Ex parte</i> , 8 Wall, p. 105.....	58